

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mario Ferbo Mancini,

File No. 20-cv-02532 (ECT/DTS)

Plaintiff,

v.

**ORDER ACCEPTING REPORT
AND RECOMMENDATION**

Federal Bureau of Prisons; Warden Fikes, *Official and/or Personal Capacities where applicable*; Dr. Mayer, *Clinical Director, Official and Individual (Personal) Capacities*; Dr. Broadway, *Essentia Health Duluth MN, Official and Individual (Personal) Capacities*; Heidi Voss, *Health Service Administrator, Official and Individual (Personal) Capacities*; Jenefer Southwick, *Physicians Assistant, Official and Individual (Personal) Capacities*; Nurse Nelson, RN, *Official and Individual (Personal) Capacities*; and United States of America, The - FTCA Claim,

Defendants.

Magistrate Judge David T. Schultz issued a Report and Recommendation on January 31, 2022. ECF No. 66. No party has objected to that Report and Recommendation, and it is therefore reviewed for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Finding no clear error, and based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. The Report and Recommendation [ECF No. 66] is **ACCEPTED**;

2. The Federal Defendants' (the United States of America, the Federal Bureau of Prisons, Warden Fikes, and Jenefer Southwick) Motion to Dismiss Amended Complaint [ECF No. 34] is **GRANTED IN PART** and **DENIED IN PART** as follows:

- a. The motion is **GRANTED** with respect to the *Bivens* claims, and those claims are **DISMISSED WITHOUT PREJUDICE** in their entirety for failure to exhaust;
- b. The motion is **GRANTED** with respect to the Federal Tort Claims Act claim as asserted against the Federal Bureau of Prisons and all individual Defendants, and those claims are **DISMISSED WITH PREJUDICE**; and
- c. The motion is **DENIED** with respect to the Federal Tort Claims Act claim as asserted against the United States of America.

3. Defendant Dr. Broadway's Motion to Dismiss Pursuant to Rule 12(b)(6) [ECF No. 44] is **GRANTED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 23, 2022

s/ Eric C. Tostrud

Eric C. Tostrud
United States District Court